

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

BRET WILLIAM ROSS,

Case No. 3:24-cv-05573-TMC

Petitioner,

**ORDER DENYING MOTION FOR RELIEF  
FROM JUDGMENT**

V.

JASON BENNETT,

### Respondent.

## L. ORDER

Before the Court is Petitioner Bret William Ross's motion for relief from judgment.

Dkt. 13. The Court has reviewed the motion and the remaining record. The motion is DENIED.

On August 13, 2024, the Court dismissed Mr. Ross's federal habeas petition with prejudice in its order adopting the Report and Recommendation of U.S. Magistrate Judge Brian A. Tsuchida. Dkt. 8. The Court agreed with Judge Tsuchida that the petition was untimely and that the asserted ground for relief lacked merit. *Id.* at 2.

Mr. Ross has now filed a motion for relief from judgment under Federal Rule of Civil Procedure 60(b)(4), which allows the Court to grant relief from final judgment if “the judgment is void.” Mr. Ross argues that the judgment is void because although he “sought relief under 28 U.S.C. § 2241,” the Court “interpreted and recharacterized his pro se petition as a 28 U.S.C.

§ 2254 petition subjecting him to the restrictions of 28 U.S.C. § 2244(b).” Dkt. 13 at 1–2. This argument is unconvincing. Because Mr. Ross is in custody pursuant to a state court judgment, the Court is required to construe his habeas petition as one filed under 28 U.S.C. § 2254. “Because § 2254 limits the general grant of habeas relief under § 2241, it ‘is the exclusive vehicle for a habeas petition by a state prisoner in custody pursuant to a state court judgment, even when the petitioner is not challenging his underlying state court conviction.’” *Dominguez v. Kernan*, 906 F.3d 1127, 1135 (9th Cir. 2018) (quoting *White v. Lambert*, 370 F.3d 1002, 1009 (9th Cir. 2004)).

## II. CONCLUSION

For the reasons explained above, the Court DENIES the motion for relief from judgment (Dkt. 13). The Court also DENIES a certificate of appealability.

The Clerk is directed to send uncertified copies of this Order to all counsel of record and to any party appearing pro se at said party's last known address.

Dated this 27th day of September, 2024.

Tony Weller

Tiffany M. Cartwright  
United States District Judge